



IN THE
Supreme Court of the United States
OCTOBER TERM 1944

No.

◆
HUNTMAN STABILIZER CORPORATION,
Petitioner,
v.
GENERAL MOTORS CORPORATION,
Respondent.

BRIEF IN SUPPORT OF PETITION

The Opinions of the Courts Below

The opinion of the District Court appears at page 274 of the Record and is reported in 53 Fed. Supp. 43; and the opinion of the Circuit Court appears at page 585 of the Record and has not yet been reported.

The judgments of the Circuit Court of Appeals were entered August 31, 1944.

Jurisdiction

Jurisdiction is invoked under Judicial Code, Section 24 (7), 28 U. S. C., Sec. 41; under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1924 (28 U. S. C., Sec. 347).

Statement of the Case

In limiting the claims in issue of patents Nos. 1,971,957 and 1,971,958 to the specific hydraulic connecting tubes exemplified in the specification and drawings, the Circuit Court gave as the principal reason that, unless so limited, these claims would monopolize for the patentee the entire field of the problem (Record, p. 591). This is contrary to fact and to the evidence.

The problem to which these patents are directed is to equalize or balance shocks and to prevent the body from rolling sidewise in going around curves. The patentee solved this problem in *one* way by connecting the recoil shock absorbers on opposite sides of the car, and the broadest claims are limited to this combination. In this combination the connecting means may be the cross tubes exemplified in the first two patents, or the cross bar of the third patent. Both forms embody the same principle. This is proved by the evidence and respondent's attorneys so admitted, R. 48a. The broad patent claims do not cover *other* means for solving this problem, and there *are* other means. Respondent's witness, Hunt, testified that substantially the same stabilizing effect could be obtained by linkages of the "Farman", "Van den Dries" and "Adex" type and demonstrated by means of a model the effect of the "Adex" linkage in comparison with the cross bar (Record p. 222). He conceded that this effect was due to the action of the linkage on the springs (Record p. 253). The District Court found that the action of this linkage was indirect and was not a physical connection of the shock absorbers and, therefore, outside the scope of the broad claims (Record p. 287). In *its* judgments the Circuit Court ignored this evidence and the findings of fact of the District Court based thereon. It also ignored the evidence and findings of fact of the District Court that the patentee invented the cross car connection before the

more complex hydraulic or cross tube connection (Record p. 285, paragraph 4). The findings of fact of the District Court, who saw the witnesses testify, is unassailable. *Adamson v. Gilliland*, 242 U. S., 350, 353. They are not to be ignored but should be given effect. *DeForest Radio Co. v. General Electric Co.*, 283 U. S., 664, 685.

The Circuit Court did not find any error in the findings of the District Court but merely stated an arbitrary conclusion directly opposed to the evidence and to the findings of the District Court and without any foundation in fact, and used this conclusion as the premise for its judgment. If this judgment of the Circuit Court is permitted to stand it would be an example of the futility of evidence, of findings of fact by the District Court, and of the Rules of Civil Procedure. It is of great public interest to know whether the judgment shall stand with the tacit or express approval of this Court. If it is to stand as a precedent, any Circuit Court of Appeals may, upon arbitrary assumptions, unsupported by, or contrary to, the evidence, reach judgments affecting patent or other property rights of any individual. Reliance on accepted standards of judicial procedure would be impaired if not destroyed.

Nor has the Circuit Court pointed to any error in the District Court's conclusions of law. It has ignored the District Court's conclusions and set forth conclusions in conflict with applicable decisions of this Court. One conclusion is that a patentee may not have the exclusive right in the idea of means that he has invented but must be limited to a form of embodiment exemplified in the specification of the patent leaving alternative or equivalent forms of embodiment open for appropriation by others even though they are included in the terms of the broad claims. This is in effect a nullification of the patent law for it would permit evasion by the simple expedient of using an equivalent form of embodiment. Under this de-

cision no patent would be valid unless worthless. The decision is in probable conflict with applicable decisions of this Court:

Smith v. Snow, 294 U. S. 1, 14;

Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405, 418, 419, 423, 424;

Hildreth v. Mastoras, 257 U. S. 27;

Keystone v. Adams, 151 U. S. 139, 145.

Another erroneous conclusion of law set forth by the Circuit Court for restricting the scope of the claims of the first two patents is that the problem the patentee worked on was a common one to motor car manufacturers: that the various devices and publications of the prior art show how the various manufacturers were endeavoring to meet the problem. But the problem was to provide stability and easy riding *not* to embody the idea of physically connecting recoil check shock absorbers. The endeavors referred to were linkages such as that of "Adex", or supplementary springs such as those of Goyne. The Circuit Court did not find any suggestion of the idea of connecting the shock absorbers or any problem in connecting them. The field of invention outside of Huntman's invention has not been restricted by the claims in issue. The decision of the Circuit Court is in conflict with applicable decisions of this Court, which hold that the unsuccessful efforts of others to solve the problem is evidence of invention and not a ground for restricting an inventor to a specific embodiment of a broadly novel idea of means.

Hobbs v. Beach, 180 U. S. 383, 392;

Expanded Metal Co. v. Bradford, 214 U. S. 366, 381.

Among the reasons in the Circuit Court's decision for holding the two later patents, 1,971,959 and 1,971,960, in-

valid is that they cannot be sustained unless they are to be classed as further embodiments of the earlier application (sic) 1,971,957 (Record, pp. 592-593). They are embodiments of the broad idea of that patent of *recoil check* shock absorbers and a connecting means. But even if they were not, this would not be any ground of invalidity.

Another reason advanced as conclusive against these patents is that they were not applied for until after the respondent had announced the appearance of the accused structures (Record, p. 592). This is not given as an anticipation nor could it be since the patentee had made the invention several years prior to the announcement, as found by the District Court, and filed the applications for those patents only a few months after this announcement and well within the two year statutory period. Under this holding of the Circuit Court it would logically follow that if an inventor discloses his invention to a manufacturer and the manufacturer publicly announces his adoption of the invention before the inventor files his application, the patent is invalidated or infringement is excused. This is a novel and important question of federal law which has not been, but should be, settled by this Court.

The Circuit Court also held these two patents anticipated by a patent to Goyne which showed spring devices and a connecting rod for absorbing and distributing shocks (Record, p. 592). But this conclusion, contrary to the findings of the District Court, is based upon misconstruction of the facts and law pointed out above. It concluded that because Goyne was seeking a way to the same end as the patentee, Huntman, the means were the same. This is no basis for anticipation.

The Circuit Court made no decision on the specific question raised in Petitioner's appeal as to the sufficiency of evidence of infringement by Buick and Chevrolet, basing its denial of this appeal on the narrowed scope of the first two patents and its finding of invalidity of the last two

patents. If it is in error on the above grounds the questions raised by Petitioner's appeal should be decided.

The conflict of the Circuit Court's decision with undisputed evidence in the case and with the findings of fact and conclusions of law of the District Court without assigning reasons therefor is not the usual and accepted course of judicial proceedings as set forth in the Federal Rules of Civil Procedure nor the procedure in law or equity courts.

ARGUMENT

Point 1

The Circuit Court of Appeals for the Third Circuit in restricting claims in issue of patents 1,971,957 and 1,971,958 and in holding the claims in issue of patents 1,971,959 and 1,971,960 invalid contrary to the evidence and to the District Court's findings of fact and without any showing of error therein, has so far departed from the accepted and usual course of judicial proceedings as set forth in Rule 52a of the Rules of Civil Procedure as to call for an exercise of this Court's power of supervision. *E. H. Ferree Co. v. United Shoe Machinery Co.*, 209 U. S. 614, 290 U. S. 708. The question concerning Rule 52a is of great public importance:

Halliday v. United States, 315 U. S. 94;
Berry v. United States, 312 U. S. 450;
Conway v. O'Brien, 312 U. S. 492.

In *Conway v. O'Brien* the Supreme Court said "We granted certiorari to examine whether there had been sufficient compliance with Rule 50(b) to authorize dismissal of the complaint". In the present case compliance with Rule 52a is in question. It is of similar public importance.

Point 2

The Circuit Court of Appeals for the Third Circuit in restricting the claims in issue to the specific exemplification in the specification and drawings and to the scope of other more limited claims has decided important federal questions in a way probably in conflict with applicable decisions of this Court and more particularly,

Mowry v. Whitney, 81 U. S. 620;

Keystone v. Adams, 151 U. S. 139;

Hobbs v. Beach, 180 U. S. 383;

Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405;

Expanded Metal Co. v. Bradford, 214 U. S. 366;

Smith v. Snow, 294 U. S. 1, 4.

It is of public importance that basic principles of patent law established by the decisions of this Court be followed by the circuit courts of appeal and that decisions of the circuit courts shall not establish precedents in conflict therewith and that confusion and uncertainty in the law should be avoided.

Point 3

The Circuit Court for the Third Circuit has decided important questions of federal law which have not been, but should be, settled by this Court. In holding the last two patents invalid on the ground that they were not embodiments of the earlier filed patent and because they were filed after Respondent's announcement of the appearance of the accused structures, though this announcement was later than the patentee's invention and within the two year statutory period, the Circuit Court has raised questions which have not been decided by this Court. Questions, of general application, affecting the validity of patents should be decided by this Court, particularly where no foundation in the statutes nor in equity is given for the opinion of the Circuit Court.

Point 4

If upon review by this Court the scope and validity of the claims are sustained, the question of the sufficiency of proof of infringement by the Buick and Chevrolet structures is in question. In the evidence, apparently not considered by the courts below, are complete factory drawings and shop manuals showing and describing these structures in detail. To require in addition the production and demonstration of infringing mechanism as necessary to complete proof would be impractical as a general rule in patent cases because of size and bulk.

The above points relate to material questions on which the Circuit Court has based its judgments.

WHEREFORE your Petitioner earnestly prays that the Petition for Writ of Certiorari be granted, the cause reviewed, and the Judgments of the Circuit Court of Appeals for the Third Circuit reversed.

Respectfully submitted,

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